

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eliana Behar	Team: Squad #05	CCRB Case #: 202203051	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/12/2022 2:13 PM	Location of Incident: Northeast corner of South Third Street and Borinquen Place	Precinct: 90	18 Mo. SOL 11/12/2023	EO SOL 11/12/2023	
Date/Time CV Reported Fri, 05/13/2022 11:56 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 05/13/2022 11:56 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Alejandro Pimentel	30078	967258	090 PCT
2. CPT Sean Claxton	00000	943092	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Fernando Garcia	04798	943272	090 PCT
2. PO Isaias Acosta	07009	972495	090 PCT
3. PO Bryan Kim	00457	973110	090 PCT
4. PO Anthony Bisram	10447	960253	090 PCT
5. PO Mardochee Saintphard	04682	966321	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Alejandro Pimentel	Abuse: Police Officer Alejandro Pimentel stopped § 87(2)(b)	
B. PO Alejandro Pimentel	Force: Police Officer Alejandro Pimentel struck § 87(2)(b) with a vehicle.	
C. PO Alejandro Pimentel	Force: Police Officer Alejandro Pimentel used physical force against § 87(2)(b)	
D. CPT Sean Claxton	Abuse: Captain Sean Claxton issued an unlawful summons to § 87(2)(b)	

Case Summary

On May 13, 2022, § 87(2)(b) filed the following complaint with the CCRB via the on-line website.

On May 12, 2022, § 87(2)(b) was riding a bicycle when PO Alejandro Pimentel, of the 90th Precinct, stopped him by striking him with the police vehicle (**Allegation A: Abuse of Authority**—§ 87(2)(g)) (**Allegation B: Force**—§ 87(2)(g)) PO Pimentel exited the vehicle, spoke with § 87(2)(b) and pushed him (**Allegation C: Force**—§ 87(2)(g)) § 87(2)(b) Officers handcuffed § 87(2)(b) and brought him back to the 90th Precinct Stationhouse. He was released with a summons for disorderly conduct (**Allegation D: Abuse of Authority**—§ 87(2)(g))

Body Worn Camera (BWC) footage of this incident was obtained from 11 officers. There were 14 BWC videos in total (Board Review 01-14). No exterior surveillance was found at the location (Board Review 16).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Alejandro Pimentel stopped § 87(2)(b)
Allegation (B) Force: Police Officer Alejandro Pimentel struck § 87(2)(b) with a vehicle.
Allegation (C) Force: Police Officer Alejandro Pimentel used physical force against § 87(2)(b)
§ 87(2)(b)

On May 12, 2022, § 87(2)(b) a 38-year-old 5'9" black male, was wearing a collared button-down shirt with a large red Doordash bag on his back was riding a CitiBike to make a food delivery. While riding his bicycle along Marcy Avenue in Brooklyn he heard a person say "yo" from behind him and turned his head back and noticed a marked police vehicle about a car's length behind him. He did not know if the person who yelled "yo" was trying to get his attention or someone else's. § 87(2)(b) continued riding his bicycle and made a left turn on South Third Street. At the intersection of Borinquen Place and South Third Street the police vehicle pulled up on the right side of § 87(2)(b) bicycle and hit him. § 87(2)(b) fell off his bicycle as a result. § 87(2)(b) believed that the police vehicle purposefully hit him. After being hit, § 87(2)(b) left leg was hurting, and § 87(2)(b) immediately called 911 to report that he was hit by a police vehicle. At this point PO Pimentel, the driver of the police vehicle, was standing nearby § 87(2)(b) and § 87(2)(b) said to him, "what the fuck is wrong with you?" PO Pimentel did not verbally respond to him and immediately placed both of his hands on § 87(2)(b) chest and pushed him. § 87(2)(b) pushed back to defend himself and at this point three to four officers approached § 87(2)(b) and placed him in handcuffs. He was brought back to the stationhouse and EMS came to examine his leg. EMS asked him if he wanted to go to the hospital and he declined. § 87(2)(b) stated that upon returning home his leg was in pain, so he went to the hospital. He was given painkillers and told not to ride his bicycle for two days. § 87(2)(b) did not sign a HIPAA form and the CCRB was therefore unable to obtain his medical records (Board Review 15).

The initial 911 call took place at 2:07pm and was from a Walgreens employee at 285 Broadway stating that someone shoplifted inside of the store and then fled on a Citi Bike towards Havermyer Street with items inside of a bag. The employee described this individual as a Hispanic male, in his early 40s, dressed in all grey. At 2:10pm officers were canvassing for the suspect and stopped § 87(2)(b) at 2:17pm at Borinquen Place and South Third Street (Board Review 32, 35). § 87(2)(b) then called 911 at 2:15pm and reported that while doing food delivery he was hit by a police vehicle and requested EMS (Board Review 33, 34). According to Google Maps, the distance from

Walgreens at 285 Broadway to Borinquen Place and South Third Street is 0.2 miles (approximately 3 ½ blocks) and it is a two-minute drive, and Havermeyer Street intersects with Borinquen Place (Board Review 36).

PO Pimentel's BWC footage (Board Review 04 - 1 of 3), begins with him driving his police vehicle. Due to the BWC angle, PO Pimentel's right hand is seen on the steering wheel and his left hand is resting on the driver's side door with his finger on the button that rolls the window open/shut. There is no street view since his BWC is located on his chest. At 00:27 PO Pimentel makes a left turn which is seen based on the steering wheel movement. At 00:31 § 87(2)(b) can be seen through the driver's side window riding his bicycle. PO Pimentel's vehicle is a few inches behind the bicycle and PO Pimentel continues driving so that he is parallel to § 87(2)(b) who is about a foot away on his left. § 87(2)(b) is looking forward and his face has a neutral expression. At 00:32 PO Pimentel is driving forward and turns his steering wheel to the right. § 87(2)(b) goes out of view momentarily as PO Pimentel drives forward and past § 87(2)(b). At 00:32, § 87(2)(b) comes back into view briefly next to PO Pimentel's driver's side window again in an upright position before moving/falling to his left at 00:32 just as he was in front of the vehicle's driver's side mirror. PO Pimentel grabs the gear shift at 00:34 and moves it into park at 00:35. At 00:40 he exits his vehicle and § 87(2)(b) is seated on the ground in the middle of the street, next to his bicycle which is also on the ground, lying on its left side. There is no audio, however § 87(2)(b) is seated on the ground and appears to be yelling at PO Pimentel. At 00:44 he stands up from the ground and appears to still be yelling at him and he is also on his phone. At 01:00 the audio begins, and § 87(2)(b) is on the phone with 911 reporting that he was hit by a police vehicle. PO Isaias Acosta and PO Anthony Bisram are also present and standing nearby in the street. PO Bisram requests that § 87(2)(b) move his bicycle to the sidewalk. § 87(2)(b) does not move it. PO Pimentel moves the bicycle to the sidewalk. At 01:28 PO Pimentel walks back to § 87(2)(b) who is still on the phone in the middle of the street. At 01:33 PO Mardochee Saintphard asks § 87(2)(b) to move to the sidewalk. At 01:41 § 87(2)(b) hangs up the phone and faces PO Pimentel, about a couple feet away from him. As soon as he hangs up the phone he says to PO Pimentel "what were you saying?" and takes a step closer to PO Pimentel. PO Bryan Kim's BWC (Board Review 03) captured the next portion of the BWC more clearly. At 01:30 § 87(2)(b) has his cellphone in his right hand and his gloves in his left hand and both he and PO Pimentel each take a step closer towards each other and they are inches from each other's faces. At 01:41 PO Pimentel says to § 87(2)(b) "no one hit you." At this point PO Kim is standing behind Pimentel and the push cannot be seen. PO Bisram's BWC (Board Review 02) captures the next portion of PO Pimentel and § 87(2)(b) interaction best, and at the 01:40 mark, PO Pimentel and § 87(2)(b) are standing inches away from each other with both of their arms at their sides. At 01:41 § 87(2)(b) appears to clench his arms and yells "you hit me" while his head is leaning towards PO Pimentel, however his hands remain at his side. In this moment, at 01:41, PO Pimentel extends both of his arms towards § 87(2)(b) and pushes him and § 87(2)(b) steps back. At 01:42, playing frame by frame, PO Pimentel makes contact with § 87(2)(b) chest and § 87(2)(b) takes one big step back and immediately places his hand in front of his body. At 01:43 § 87(2)(b) lunges towards PO Pimentel with both of his arms in front of him and PO Saintphard restrains him by grabbing onto his left arm while PO Bryan Kim, grabs onto his right arm. PO Bisram then grabs onto § 87(2)(b) and the officers place him in handcuffs.

PO Acosta is the passenger in PO Pimentel's police vehicle and his angle on the front passenger side does not capture what is happening outside of the front driver's side where § 87(2)(b) is riding his bicycle (Board Review 01). PO Bisram and PO Bryan Kim are the officers that arrive on scene a few seconds after the alleged vehicle strike occurs (the vehicle strike would have occurred at 14:13:31 based on the time displayed on the upper righthand side on PO Pimentel's BWC), however their BWCs are on their chests and capture the interior of their vehicle and do not capture a street view so it is unclear if they were in a position to see the point where § 87(2)(b) was

allegedly hit by the police vehicle (Board Review 02, 03). PO Bisram's BWC shows their police vehicle in motion at the 00:32 mark, which has the timestamp of 14:13:31 (the alleged vehicle strike) and he makes a left turn at the 00:38 mark of the BWC where the time is displayed as 14:13:37. At 00:40 he stops his vehicle and immediately exits. At the 0:44 mark § 87(2)(b) is seen standing next to his bicycle, which is on the ground and PO Pimentel is standing next to him. PO Bisram and PO Acosta's BWC's do not capture the alleged vehicle strike, and no other BWC videos capture the vehicle strike either (Board Review 04-11).

PO Pimentel stated that he received a radio run for a larceny in progress at Walgreens at 285 Broadway and went to the store to speak to the Walgreens employee. The Walgreens employee told PO Pimentel and PO Acosta that the defendant who committed the larceny left the store and was wearing gray and riding a Citi Bike. PO Pimentel and PO Acosta canvassed for this individual and shortly after, a few blocks away from Walgreens he saw a male who was wearing a gray sweater riding a Citi Bike. PO Pimentel followed § 87(2)(b) who was ahead of him, and said something to him, which he could not recall, from his window. § 87(2)(b) did not stop his bicycle and PO Pimentel proceeded to follow him and pulled up alongside, about 1-2 feet away from § 87(2)(b) who was on the left-hand side of his vehicle. PO Pimentel stopped his vehicle as did § 87(2)(b) and as soon as they both stopped, PO Pimentel saw § 87(2)(b) fall off his bicycle. PO Pimentel was not sure how exactly he fell but stated that he did not hit § 87(2)(b) with his vehicle. PO Pimentel got out of his vehicle and § 87(2)(b) cursed and yelled at him saying that PO Pimentel hit him with his vehicle. § 87(2)(b) Citi Bike was not damaged nor was PO Pimentel's vehicle, and § 87(2)(b) was not injured. Shortly after, more officers arrived on scene. PO Pimentel was a couple feet away from § 87(2)(b) and § 87(2)(b) placed both of his hands in fists and walked up to PO Pimentel less than one foot from his face yelling. He then leaned his body forward towards PO Pimentel and flexed his muscles and PO Pimentel thought he was going to hit him in the face. At this point PO Pimentel pushed § 87(2)(b) away from him by sticking out both of his hands in front of his body and pushing § 87(2)(b) to create space between him and § 87(2)(b). After this, officers placed him in handcuffs and § 87(2)(b) was taken back to the precinct (Board Review 23).

PO Acosta stated he was in the front passenger seat of the vehicle that PO Pimentel was driving and canvassing for the person who fit the description of the suspect who had committed the larceny. PO Acosta saw § 87(2)(b) on a Citi Bike and believed that he fit the description of the individual they were searching for, and both officers rolled down their windows and tried to get § 87(2)(b) attention by yelling "hey." PO Pimentel was closest to § 87(2)(b) as § 87(2)(b) was on their driver's side, and he did not respond to PO Pimentel yelling to him and continued bicycling. About a half a block away from where they first observed § 87(2)(b) PO Pimentel drove alongside § 87(2)(b) and § 87(2)(b) stopped his bicycle and fell off onto the ground, about a foot parallel from their police vehicle. At this point PO Pimentel stopped his vehicle and the officers got out of the vehicle to see if he was okay. § 87(2)(b) immediately alleged that their vehicle hit him and called 911 to report he was hit by a police vehicle. PO Acosta stated that their NYPD vehicle made no contact with § 87(2)(b) and there was no damage to his bicycle or their vehicle. After § 87(2)(b) got off the phone with 911, he screamed at the officers. He got about 6-8 inches away from PO Pimentel's face, put his phone at his side, and placed his hands in fists. PO Pimentel pushed § 87(2)(b) on his chest to get him to back away from him and then § 87(2)(b) put both of his arms up as though he was going to hit PO Pimentel.

PO Bisram stated that when he arrived, he saw § 87(2)(b) standing next to his bicycle, which was lying on the road, approximately three feet away from PO Pimentel's vehicle. He could not recall if he saw § 87(2)(b) riding his bicycle prior to seeing the bicycle on the ground and could not recall if he saw PO Pimentel stop § 87(2)(b). He did not see any vehicle hit § 87(2)(b). PO Bisram approached § 87(2)(b) who was screaming that PO Pimentel's vehicle hit him. § 87(2)(b) then

lunged at PO Pimentel, getting around two feet away from PO Pimentel's face and PO Bisram thought that § 87(2)(b) was going to hit PO Pimentel. He did not recall where § 87(2)(b) hands were or if his hands were in front of his body as though he was going to throw a punch, however he believed that § 87(2)(b) behavior showed an intention to fight. At this point, PO Pimentel pushed § 87(2)(b) away from him with his two hands, and officers placed § 87(2)(b) in handcuffs to avoid a physical altercation from ensuing (Board Review 24).

Stop Report § 87(2)(b) notes that § 87(2)(b) was stopped at South Third Street and Borinquen Place after officers received a radio run for petit larceny from a verified caller who gave a description of a Hispanic male who was around 40 years old and wearing gray that fled on a Citi Bike after stealing merchandise from Walgreens. Five blocks away from the incident location, the officers observed § 87(2)(b) who fit the physical description. While attempting to stop him § 87(2)(b) fell off his bicycle on his own. § 87(2)(b) was determined not to be the subject wanted for petit larceny (Board Review 31).

Patrol Borough Brooklyn North investigated the allegation that PO Pimentel struck § 87(2)(b) with the police vehicle. Their investigation disposition was unsubstantiated as based on the officer's testimonies and video footage it could not be proven or disproven that § 87(2)(b) was struck by their vehicle (Board Review 38).

According to *People v. DeBour*, 40 N.Y.2d 201 (1976) an officer can stop and detain an individual when there is reasonable suspicion that the individual has committed a crime (Board Review 18).

Patrol Guide Procedure 221-01 states that "force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances." Police officers should consider the following factors when determining whether the use of force is reasonable. The factors include: the nature and severity of the crime, actions taken by the subject, duration of the actions, the immediacy of perceived threat or harm to members of service or bystanders, whether the subject is actively resisting custody or attempting to evade arrest by flight, the number of subjects in comparison to the number of officers, the size, age, and condition of the subject compared the officer's, violent history of the subject, presence of hostile crowd, and whether the subject is under the influence (Board Review 17).

The officers observed § 87(2)(b) 0.2 miles away from the Walgreens and stopped him 10 minutes after receiving the call from the Walgreens employee where they were provided with a physical description of the suspect and his direction of travel. Although § 87(2)(b) is a black male, and not Hispanic, based on the fact that he was riding a Citi Bike within a close time, distance of the incident and in the same direction of travel as the suspect, was wearing grey clothing, and was in the same age range as the suspect, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Based on the BWC footage there is insufficient evidence that PO Pimentel hit § 87(2)(b) with his vehicle. The angle shows § 87(2)(b) through the driver's side door on his bicycle when he falls, and then later on the ground with his bicycle, but does not capture what may have caused him to fall. Since there is no video footage showing the vehicle hit § 87(2)(b) and no officer testified to PO Pimentel hitting § 87(2)(b) with his vehicle, the investigation was unable to determine by a preponderance of the evidence whether PO Pimentel struck § 87(2)(b) with his vehicle. § 87(2)(g)

§ 87(2)(g)

Based on the BWC and officers' testimonies, § 87(2)(b) stepped within inches of PO Pimentel's face while yelling at him. Although both of his hands remain at his side, § 87(2)(b) does clench his arms and leans his head in toward PO Pimentel as he yells at him, thereby placing PO Pimentel in fear of his safety. While PO Pimentel initiates the physical contact with § 87(2)(b) he pushed him one time. § 87(2)(g)

Allegation (D) Abuse of Authority: Captain Sean Claxton issued an unlawful summons to

§ 87(2)(b)

§ 87(2)(b) was brought back to the 90th Precinct Stationhouse and placed in a holding cell. He was later released with a summons for disorderly conduct (Board Review 01).

PO Pimentel was the issuing officer for § 87(2)(b) disorderly conduct summons, however Captain Sean Claxton admitted to being the officer who made the decision to issue § 87(2)(b) a disorderly conduct summons. Therefore, the allegation was pled against him.

Sgt. Garcia's BWC shows him arriving on scene as § 87(2)(b) is being placed in handcuffs. At 01:01 § 87(2)(b) is being held by officers on the sidewalk and there are a few civilians walking by on foot. They do not appear to be stopping, looking, or interfering with what is happening. At 01:54 there is one bystander across the street who is facing the direction of where the officers are standing with § 87(2)(b) however he is walking and not speaking to § 87(2)(b) or any of the officers. At 02:06 PO Pimentel explains to Sgt. Garcia that § 87(2)(b) came into his face so he pushed him back to create space between them and then § 87(2)(b) looked as if he was about to hit him so they put him under arrest. At 02:24 Sgt. Garcia tells PO Pimentel to "bring him back (to the stationhouse)." Sgt. Garcia does not specify why he is being brought back to the stationhouse (Board Review 08).

In PO Bisram's BWC, at 02:34, officers escort § 87(2)(b) who is in handcuffs, from the middle of the street to the sidewalk. There are no visible bystanders while he is in the street. At 02:42 § 87(2)(b) is on the sidewalk with four officers surrounding him and there are two bicyclists stopped in the bike lane near where § 87(2)(b) is located and their heads are turned and they appear to be looking back at § 87(2)(b) and the police. At 02:50 PO Bisram yells "let's go" to the bicyclists and at 02:56 one of the bicyclists peddles away. The bicyclists do not say anything verbally and do not approach the officers or § 87(2)(b) (Board Review 02).

PO Pimentel stated that Captain Claxton ultimately determined that § 87(2)(b) should receive a disorderly conduct summons, and PO Pimentel issued him the summons for disorderly conduct due to his violent and threatening behavior (Board Review 23).

Captain Claxton stated that he was directed to go to the 90th Precinct Stationhouse to investigate an incident involving an allegation of excessive force where § 87(2)(b) who was placed under arrest for disorderly conduct, resisting arrest, and obstructing governmental administration, alleged that PO Pimentel hit him with his police vehicle. Cpt. Claxton interviewed § 87(2)(b) inside of the holding cells with Sgt. Garcia present about what happened, got a statement from PO Pimentel, and reviewed all the officers' BWC videos from this incident. Upon reviewing the BWC he observed § 87(2)(b) get into PO Pimentel's face with his body tensed and saying fighting words to PO Pimentel. Based on Cpt. Claxton's review of the BWC he determined that § 87(2)(b) did not need to be arrested, rather he could be released with a summons for disorderly conduct and relayed this

information to Sgt. Garcia. Cpt. Claxton stated that he believed disorderly conduct was the most fitting summons for § 87(2)(b) as the camera footage showed that § 87(2)(b) demeanor was combative, and he was placing the officers in fear of their safety which is him acting in tumultuous behavior and decided to overlook the fact that he was resisting arrest and obstructing governmental administration. Cpt. Claxton stated that there was a public harm aspect as § 87(2)(b) was standing outside on a public street in a busy area with traffic (Board Review 27).

§ 87(2)(b) was issued a C-summons for disorderly conduct section 240.20(1) by PO Pimentel and notes that he observed § 87(2)(b) acting violent and threatening towards him and other police officers on scene. It adds that § 87(2)(b) approached the undersigned with a closed fist and charged at him causing public alarm and annoyance (Board Review 19).

According to New York State Penal Law Section 240.20(1), a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he engages in fighting or violent, tumultuous, threatening behavior (Board Review 20).

People v. Baker, 20 N.Y. 3d 354 (2013), highlights the public harm requirement of the disorderly conduct statute, stating that, “critical to a charge of disorderly conduct is a finding that defendant's disruptive statements and behavior were of a public rather than an individual dimension” (Board Review 22). People v. Weaver, 16 N.Y.3d 123 (2011), states that, “a person may be guilty of disorderly conduct only when the situation extends beyond the exchange between the individual disputants to a point where it becomes a potential or immediate public problem” (Board Review 21).

The BWC footage shows § 87(2)(b) verbally upset while interacting with and getting close to PO Pimentel's face with his arms clenched. The BWC also shows § 87(2)(b) physically respond to being pushed by PO Pimentel by lunging at PO Pimentel with his arms out in front of him. While § 87(2)(b) gets verbally and physically aggressive towards PO Pimentel, his actions were consistent with him being personally angry at PO Pimentel and his words/actions did not involve any member of the public. The few people who were nearby walking or on their bicycles did not gather or interact with § 87(2)(b) or the officers, obstruct traffic, or take any action. At no point did this incident escalate into the public sphere. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- Police Officer Alejandro Pimentel has been a member of service for four years and has been a subject in one CCRB complaint and one allegation, which is still open. § 87(2)(g)
- Captain Sean Claxton has been a member of service for 16 years and has been a subject in 10 CCRB complaints and 26 allegations, of which three were substantiated:
 - 201400940 involved substantiated allegations of a stop, a frisk, and refusal to provide name/shield against Cpt. Claxton. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming severe personal injuries, pain, suffering, medical treatment, medical expenses, loss of earnings, hospitalizations,

permanence, loss of enjoyment of life, damage to reputation, psychological and psychiatric injuries, and other serious injuries. He was seeking \$20,000,000 as redress (Board Review 30).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad: 1

Investigator:	<u>Inv. Behar</u> Signature	<u>Eliana Behar</u> Print Title & Name	<u>07/24/23</u> Date
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Squad Leader:	<u>Mgr. Joy Almeyda</u> Signature	<u></u> Print Title & Name	<u>07/24/2023</u> Date
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Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date
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